

1 the financing of this proposed station?

2 A No, we do not to finance this station.

3 Q As I recollect from your deposition, that is
4 because you have personal assets to do that.

5 Q That's correct.

6 MR. FRIEDMAN: Your Honor, at this time I
7 would like to mark for identification as Bott 6, Your
8 Honor, a document that starts with a letter to the
9 secretary of the FCC by Thomas J. Hutton and follows a
10 form 701 which is in itself two pages and then various
11 exhibits thereto.

12 (Whereupon, the document was
13 identified as Bott Exhibit Number
14 6 for identification.)

15 BY MR. FRIEDMAN:

16 Q Ms. Ferguson, I'd like to ask you to look at
17 page 2 of the form 701 and ask you if that is your
18 signature?

19 A Yes, it is.

20 Q And Ms. Ferguson, was this prepared by you or
21 under your direction?

22 A It was prepared by me.

23 MR. FRIEDMAN: Your Honor, I'd like to move
24 that Bott 6 into evidence.

25 MR. MONAHAN: Your Honor, this relates to a

1 permit for a station in Baker, Oregon but I'm not sure
2 of the relevance of it. It's in the record that she has
3 a permit for this facility.

4 MR. FRIEDMAN: I'm following the prior
5 question with some evidence that is raised in this
6 document and this is how I would like to deal with it.
7 She may not have a recollection of it and since she says
8 that she prepared this document she does know the facts
9 in here.

10 JUDGE LUTON: The question is relevancy. Why
11 should I receive this document? What's it got to do
12 with the case?

13 MR. FRIEDMAN: It has relevance to the fact
14 that Ms. Ferguson has indicated in just her present
15 testimony that she did not need bank financing and was
16 going to use her own assets. If I can make a proffer I
17 will that there is a statement in here that says she has
18 changed her proposal on this application to go from bank
19 financing to personal assets and I want to know whether
20 that has jeopardized her proposal here.

21 MR. MONAHAN: Your Honor, are we fishing for a
22 financial issue?

23 MR. FRIEDMAN: I'm really not fishing.
24 They're very wealthy people and I assume they can
25 finance this but I'm trying to determine what property

1 is going to be used. Is it joint property, single
2 property? The only way I can get it in is by virtue of
3 asking her the question on this document. It's at pages
4 4 and 5, Your Honor, starting at the bottom of 4 and
5 going on to the next page. The question here is whose
6 property is in this application? Is it her or her
7 husband? We've got antenuptial agreements and we have
8 to reach this conclusion as to which party is doing
9 what.

10 MR. MONAHAN: But, Your Honor, this is
11 statements regarding financing involving the
12 construction of a power line for a station in Baker,
13 Oregon.

14 MR. FRIEDMAN: Well, I think it's more than
15 that, Mr. Monahan.

16 MR. MONAHAN: This says " A revised financing
17 proposing contemplating additional financing for the
18 power line was filed at Twin Falls Bank and Trust in
19 Twin Falls."

20 MR. FRIEDMAN: Read the next sentence.

21 MR. MONAHAN: "In early August they denied the
22 proposal due to the projected pay back time resulting
23 from the increased financing proposal."

24 MR. FRIEDMAN: Next paragraph.

25 JUDGE LUTON: Oh, come on. Mr. Friedman,

1 please tell me once again the use that you expect to
2 make of 6 for identification.

3 MR. FRIEDMAN: The question is whether the
4 statements and the actions that have taken place
5 involving Baker, Oregon have somehow affected her
6 proposal in Blackfoot and in particular what properties
7 are now being affected.

8 JUDGE LUTON: Affected how? By the
9 applicant's ability to afford?

10 MR. FRIEDMAN: No, Your Honor. I'm very
11 concerned in this case as to whose property, whose
12 assets, are being used to build this station. We have
13 evidence here, we have an antenuptial saying I'm Clare
14 Ferguson here and there's David Capps there and we're
15 separate.

16 JUDGE LUTON: How does the document help you
17 determine the answer to your question?

18 MR. FRIEDMAN: On page 5, Your Honor, it
19 reflects the fact that mortgages owned by Ms. Ferguson
20 and her husband are being released in favor of going
21 forward to build Baker, Oregon where previously they
22 said they were going to use a bank. I want to know if
23 those properties are the same properties that she told
24 this banker in 1985 she was going to use for the
25 Blackfoot application. Are there other properties

1 involved and we should know if there are other joint
2 properties being used here.

3 MR. MONAHAN: I don't believe she testified
4 about properties being pledged to the bank.

5 JUDGE LUTON: I didn't hear that either.

6 MR. FRIEDMAN: She said joint assets, Your
7 Honor.

8 MR. MONAHAN: Well, but no one said that they
9 were pledged to here to the bank. You're getting into
10 the area of bank financing.

11 MR. FRIEDMAN: No, no, I'm not. She said to
12 the banker --

13 JUDGE LUTON: Why can't you ask your question
14 -- to the document.

15 MR. FRIEDMAN: Well, I can't but this is
16 helping me to establish the predicate.

17 JUDGE LUTON: What predicate?

18 MR. FRIEDMAN: That there was a change in
19 plans in Baker that now involve joint products.

20 JUDGE LUTON: Try to establish that predicate
21 through the witness, why don't you?

22 MR. FRIEDMAN: I'd be glad to, Your Honor.

23 (Whereupon, off the record at 2:25 for a short
24 recess.)

25 BY MR. FRIEDMAN:

1 Q Ms. Ferguson, do you hold a construction
2 permit for station KCMB FM located at Baker, Oregon?

3 A Yes.

4 Q And did you originally in connection with that
5 application expect that the Twin Falls Bank would
6 finance the construction?

7 A Originally when?

8 Q When you applied for the construction permit
9 at Baker which I gather is July or so of '85.

10 A They would have financed one of the stations,
11 yes.

12 Q And which station was that?

13 A Well, either one at the time, however, may I
14 say something? It'll be real fast.

15 Q Let me ask the questions. If you'll indulge
16 me for a second.

17 Ms. Ferguson, do you recall in response to
18 questions in your deposition as to but the certification
19 that you did and included in your application was based
20 upon the visit your husband made to the bank and your
21 answer being "Well, may I explain something?" "Sure."
22 And your response to that being, "If we are granted both
23 licenses, both Baker and Blackfoot, I thought it was
24 important to find out exactly what we needed to do with
25 regard to financing and I decided to go ahead and get

1 third party financing for Baker which would absolutely
2 eliminate any need for any financing in Blackfoot. Our
3 personal assets are more than enough to handle that."
4 Do you recall that response?

5 A Yes, I do.

6 Q Okay. So has there now come a time when you
7 decided that in regard to Baker you're going to use
8 joint property of Clare Ferguson and David Capps?

9 A We have financing through a bank in Oregon.
10 We did not choose the financing through Twin Falls Bank
11 and Trust.

12 Q Okay. And are you going to secure that
13 financing in Baker with mortgages on property owned by
14 you and Mr. Capps?

15 A Personally.

16 Q Excuse me, who personally?

17 A Us personally.

18 Q Okay, so it's you and Mr. Capps?

19 A Yes.

20 Q Is that the same property that you proposed to
21 use for the financing of Blackfoot?

22 MR. MONAHAN: Objection. I don't think
23 there's any testimony that she's going to finance
24 Blackfoot.

25 THE WITNESS: We're not financing Blackfoot.

1 JUDGE LUTON: That is true. Sustained.

2 MR. FRIEDMAN: I will rephrase.

3 BY MR. FRIEDMAN:

4 Q In regard to Blackfoot you are going to use
5 personal assets, is that correct?

6 A Yes.

7 Q And those are personal assets held jointly by
8 you and Mr. Capps?

9 A Yes.

10 Q Are those the same assets that are going to be
11 used in connection with Baker?

12 A No.

13 Q Okay. Can you tell me what those assets are?

14 A Cash.

15 Q Thank you. I think you, just prior to this,
16 told us that you were employed at stations located in
17 Twin Falls, Idaho.

18 A That's correct.

19 Q Okay. And just so we have it correct for the
20 record, those stations have the call signs KEEP AM and
21 KEZJ FM, is that correct?

22 A They're changed now. They're KEZJ AM and FM.

23 Q Okay. Very good. And who is that station
24 licensed to?

25 A KSRV, Inc.

1 Q And can you tell me who owns KSRV, Inc.?

2 A David Capps and his three minor children,
3 Jeff, Andy and Emily Capps. However he sold Twin Falls.

4 MR. FRIEDMAN: Your Honor, just again I'd like
5 to mark for identification as Bott Exhibit Number 7 a
6 document which is the ownership report for KSRV, Inc.

7 (Whereupon, the document was
8 identified as Bott Exhibit Number
9 7 for identification.)

10 BY MR. FRIEDMAN:

11 Q Ms. Ferguson, could you look at the signature
12 block in the upper right hand corner of that document?

13 A Yes.

14 Q To the best of your knowledge, is that the
15 signature of David Capps?

16 A Yes, it is.

17 Q And that's the same David Capps who's your
18 spouse?

19 A Yes.

20 MR. FRIEDMAN: Your Honor, I wish at this
21 point to offer into evidence this document as Bott 7.

22 JUDGE LUTON: Any objection?

23 MR. FRIEDMAN: Thank you, Your Honor.

24 JUDGE LUTON: 7 is received.

25 (Whereupon, the document marked

1 as Bott Exhibit Number 7 was
2 received in evidence.)

3 BY MR. FRIEDMAN:

4 Q Can you tell me what's your position at the
5 radio station?

6 A I'm in sales and promotion.

7 Q And what's your title?

8 A Sales associate.

9 Q Okay. And how long have you held that title?

10 A I've been there for 6 1/2 years.

11 Q So for the whole period that you've been an
12 employee of the radio station you've held the title
13 sales associate?

14 A Yes.

15 Q Okay. And can you tell me is one of your
16 principal responsibilities to train personnel at the
17 station?

18 A I train all the sales people.

19 Q Can you tell me how many sales people there
20 are?

21 A We have five right now.

22 Q And during your years there, have you had
23 regularly approximately five employees in the sales
24 department?

25 A Up to seven.

1 Q And how few?

2 A I don't think we've had less than five.

3 Q In a normal week can you tell me how many
4 hours you spend on training?

5 A Usually one full day a week I spend traveling
6 with sales people and then five hours or maybe ten max
7 in addition to that.

8 Q Okay. And your other duties at the station
9 are in the area of programming, is that correct?

10 A Yes.

11 Q Will you tell us what programming duties you
12 have?

13 A I develop the ag programming that we carry on
14 our AM and our FM. Over the last four years -- pardon
15 me?

16 Q Excuse me. Again you used a phrase that we
17 should get clear for the record. When you say "ag
18 programming" could you just tell us what ag programming
19 is?

20 A Agriculture.

21 Q Okay. I'm sorry if I interrupted you.

22 A Okay. I've chosen some of the programs that
23 we carry. We have a full time ag news reporter and I
24 work with her on the programs and I help sell most all
25 of the programs.

1 Q Can you tell me how many hours in your average
2 work week you spend on that?

3 A That's much of my sales job. Probably about
4 half of my time, a quarter of my time.

5 Q Okay. Are you familiar with the concept of an
6 organization chart?

7 A Yes.

8 Q And in that chart who would you report to if
9 that was made for the radio station?

10 A For the most part I report to the general
11 manager.

12 Q Do you also report to the sales manager?

13 A Yes.

14 Q And that general manager is someone other than
15 your spouse?

16 A That's correct.

17 Q Ms. Ferguson, is it fair to say that your
18 average work week is a 30 hour work week?

19 A Right now it's a lot more than that but 30 on
20 the average, yes.

21 Q Can you tell me why you're not employed full
22 time?

23 A Well, I'm involved in a lot of different
24 things.

25 Q Is one of those different things you're

1 Q Now first of all, if you should receive the
2 Blackfoot construction permit would you continue to ride
3 the 22 horses and raise them?

4 MR. MONAHAN: Objection, I don't think she's
5 testified she's been riding 22 horses.

6 MR. FRIEDMAN: I told you I'm a city boy.

7 THE WITNESS: That's okay.

8 MR. FRIEDMAN: I don't know from these horses
9 things.

10 THE WITNESS: Most of them are not rideable
11 yet anyway.

12 BY MR. FRIEDMAN:

13 Q I'll withdraw that. Will you continue to ride
14 horses?

15 A Yes, I will.

16 Q How about how many hours a week do you intend
17 to ride horses?

18 A Hopefully I can ride on the week ends but
19 sometimes I go for months without riding.

20 Q And sometimes you ride during the week?

21 A No.

22 Q Okay. Now will you continue to be active in
23 these groups in Twin Falls?

24 A No, I'm going to move to Blackfoot if I get
25 this application.

1 Q The question was: Will you continue to be
2 active in Twin Falls civic affairs?

3 A No, I'll be moving.

4 Q You intend to withdraw from the civic affairs
5 in Blackfoot?

6 A In Twin Falls.

7 Q In Twin Falls. I assume that you'll also be
8 involved with your family. That you're not going to
9 eliminate that.

10 A Sure.

11 Q Let's turn for the moment to station KCMB in
12 Baker, Oregon. That is a construction permit, is it
13 not?

14 A Yes.

15 Q And that's in the name of Clare Ferguson.

16 A Yes.

17 Q Are you building that radio station, Ms.
18 Ferguson?

19 A Yes.

20 Q Can you tell me what the status of the build
21 is?

22 A We're not completed yet but we are under
23 construction.

24 Q Have you ever built a radio station before?

25 A No, it's pretty interesting.

1 Q This is your first radio station?

2 A Yes.

3 Q Who is in charge of building it?

4 A John Kelly Carlson.

5 Q Please spell his name for the record.

6 A K-E-L-L-Y C-A-R-L-S-O-N.

7 Q Who is Mr. Carlson?

8 A He is an engineer.

9 Q And are you supervising Mr. Carlson?

10 A As much as I can understand.

11 Q Is anybody else supervising Mr. Carlson?

12 A My husband has helped.

13 Q Can you tell me in what respects Mr. Capps has
14 helped in this supervision?

15 A He's built several radio stations so he
16 understands some of the things that are necessary.

17 Q In particular what has Mr. Capps done, to the
18 best of your knowledge?

19 A What are you asking?

20 Q I'll repeat the question. What actions has
21 Mr. Capps taken in regard to the construction of KCMB FM
22 in Baker, Oregon?

23 A In a discussion when Kelly comes to us and
24 talks with me about something that he needs to do then
25 David is usually there.

1 Q Did Mr. Capps decide on the equipment to be
2 purchased?

3 A No, Kelly did.

4 Q Did Kelly bring that decision as to the
5 equipment to you and Mr. Capps?

6 A Yes.

7 Q And did Mr. Capps have something to say about
8 that?

9 A There was one point where he suggested we look
10 for some used equipment that Kelly had found new.

11 Q Have you decided on the programming for KCMB?

12 A For the most part, yes, I have.

13 Q Did you make the decision alone?

14 A Yes.

15 Q Did Mr. Capps participate in that decision?

16 A Only to the extent that he's my husband and we
17 discuss these things.

18 Q Did he offer you advice?

19 A Well, he had some ideas but we've rejected
20 those for the most part.

21 Q Sounds like my wife.

22 A It wasn't that good after careful
23 consideration.

24 Q Have you selected the personnel for that radio
25 station?

1 A Yes. Some.

2 Q Did Mr. Capps participate in that selection?

3 A Only that he knew the person.

4 Q By virtue of that did he recommend the person?

5 A Do you mean was it his idea?

6 Q Sounds good. That's a good question.

7 A No, it wasn't.

8 Q Whose idea was it?

9 A Well, I knew this person, too, and I
10 approached him first, but with the good graces of David.

11 Q I see. And did David confirm that this man
12 was qualified to do the job?

13 A Yes, absolutely.

14 Q Okay. And what title will this individual
15 hold?

16 A He'll be a general manager.

17 Q I see. Ms. Ferguson, how many hours a week
18 are you now spending on this project?

19 A At the moment not too many, but in many weeks
20 up to ten hours a week.

21 Q When the station goes on the air, how many
22 hours per week do you intend to spend on it?

23 A I think I can handle, with phone calls, maybe
24 checking in every day or two days, and then maybe
25 getting together certainly quarterly, maybe every sixty

1 days or so.

2 Q Do you propose to visit that station?

3 A Maybe every sixty days.

4 Q I noted in your deposition you indicated your
5 husband visits the station he owns or the corporation
6 owns in Ontario, Oregon once every other week.

7 A Yes.

8 Q Could you tell me why you wouldn't visit that
9 station once every other week in Baker, Oregon?

10 A Because the fellow that I've chosen is really
11 a strong manager and I think that he'll do just fine
12 without me checking on him every two weeks.

13 Q Have you ever supervised the manager of any
14 radio station?

15 A No, I haven't.

16 Q Let's turn to our favorite community,
17 Blackfoot. Can you tell me how many hours a week you
18 propose to work at the Blackfoot station?

19 A I would say at least 40.

20 Q Can you tell me why, if you were on the
21 average working 30 hours a week in Twin Falls, you are
22 going to work 40 hours a week in Blackfoot?

23 MR. MONAHAN: Objection. Are you arguing with
24 the witness about that?

25 MR. FRIEDMAN: No, I'm not going to argue.

1 JUDGE LUTON: Overruled.

2 THE WITNESS: I'm to answer that, is that
3 correct? You can't run a radio station working 30 hours
4 a week. This 30 hour a week job has only been for the
5 last six or eight months. This has been a new deal for
6 me.

7 BY MR. FRIEDMAN:

8 Q Okay. Ms. Ferguson, do you propose to move to
9 the community of Blackfoot in the event your application
10 is granted?

11 A Yes, absolutely.

12 Q Have you gone down there to look at
13 residences?

14 A I have not looked specifically at residences,
15 but I have looked around.

16 Q Is it your intention to rent an apartment in
17 Blackfoot?

18 A No, that has changed since the deposition. We
19 will move physically all of us to Blackfoot.

20 Q Okay. But at the time of your deposition,
21 which was given on October 7, 1987, you only intended to
22 have an apartment there. Is that correct?

23 A At the time I wasn't free to discuss the fact
24 that Twin Falls had been sold and we had no reason to
25 stay there.

1 Q I see. And I gather by that you're telling me
2 that --

3 A KEZJ AM and FM has been sold.

4 Q Okay. Is Mr. Capps retaining an interest in
5 the buyer?

6 A No.

7 Q So you're telling me that Mr. Capps is
8 prepared to move with you to Blackfoot?

9 A Yes.

10 Q When was this decision reached?

11 A Right after the deposition.

12 Q Okay. Would you carry that decision even if
13 you're not awarded Blackfoot?

14 A Of course not.

15 Q Can you tell me, to the best of your
16 knowledge, what does Mr. Capps intend to do with the
17 proceeds of the sale of station KSRV, Inc.?

18 A I don't have any idea.

19 Q Okay. Is any of that proceeds intended to be
20 used to construct the Blackfoot station?

21 A No.

22 Q Okay. Now Mr. Capps owns the Twin Falls,
23 Idaho and the Ontario, Oregon stations. Is that
24 correct?

25 A That's correct.

1 Q Does he have any other interests in any other
2 radio stations?

3 A No.

4 Q Television stations?

5 A No.

6 Q Cable television systems?

7 A No.

8 Q Newspapers?

9 A No.

10 Q Ms. Ferguson, are you aware of the concept of
11 community property?

12 A Yes, I am.

13 Q Can you tell me what your understanding of
14 that is?

15 A I'm more aware of what it means if you were to
16 divorce.

17 Q I'm really not interested in divorce. Are you
18 aware of what it means during the marital life time?

19 A Basically that you have a 50-50 ownership in
20 things that you develop in a marriage.

21 Q Very good. To the best of your knowledge, is
22 community property operative in the state of Idaho?

23 A Yes.

24 Q And you and your husband reside in the state
25 of Idaho.

1 A That's correct.

2 Q Ms. Ferguson, at this point I want to turn to
3 that antenuptial agreement.

4 A All right.

5 Q So if you'll get it out. Again, I know you're
6 going to give us schedule B but your recollection is
7 schedule B had the assets that you owned prior to the
8 time you married Mr. Capps?

9 A Yes.

10 Q Can you give me a ball park on the value of
11 those assets?

12 A No.

13 Q If I said were they less than \$50,000, would
14 that be in the ball park?

15 A Possibly.

16 Q Less than 25?

17 A No.

18 Q So possibly between 25 and 50?

19 A Possibly.

20 Q Can you tell me how old was Mr. Capps at the
21 time you married him?

22 A Forty five.

23 Q And he had children from a prior marriage. Is
24 that correct?

25 A That's correct.

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1 Q And so did you?

2 A Yes.

3 Q I'd like you to turn to page 6 it says right
4 on the bottom. I'd like to read to you a sentence in
5 the section 8 there which says, "Notwithstanding the
6 provisions of this agreement, both of the parties hereto
7 shall have the right to provide for the other party by
8 will if he or she so desires." Ms. Ferguson, at the
9 time you executed this document, what did you understand
10 that sentence to mean?

11 A Well, I understood that if we changed our mind
12 later we could amend this.

13 Q Fine, thank you. I'd like you to turn to page
14 8 of that document, again on the top and read the
15 sentence that starts on the top, "Either party to this
16 agreement may, by appropriate written instrument
17 executed after the effective date of this agreement,
18 transfer, convey, devise or bequeath any property to the
19 other. Neither party intends to limit or restrict in
20 any way the right to receive such transfer, conveyance,
21 devise or bequest from the other party as expressly
22 stated in this agreement."

23 I ask you, at the time you executed the
24 document what did you understand that to mean?

25 A Basically the same thing.

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1 Q I'd like you to turn to schedule A of that
2 agreement. Just tell me when you've familiarized
3 yourself with that.

4 THE WITNESS: Okay.

5 BY MR. FRIEDMAN:

6 Q Ms. Ferguson, since the time you've been
7 married to Mr. Capps, has any of this property
8 identified in schedule A either been transferred to your
9 personally or into joint ownership?

10 (Whereupon, the witness examines the
11 document.)

12 THE WITNESS: No.

13 BY MR. FRIEDMAN:

14 Q Okay. Have any of the assets listed in
15 schedule A been sold since the time?

16 A Yes, the Clark County property was sold and
17 the monies from that were split between David and Jean
18 Capps. I don't recall the value of it. It was split
19 between four people actually.

20 Q Who is Jean Capps?

21 A She is his former wife.

22 Q Now in the money that David Capps received
23 from that, have you participated in the use of those
24 funds?

25 A I don't have the vaguest notion what has been

1 done with those funds.

2 Q On the other hand, you can't be certain that
3 you didn't participate in using those funds?

4 A No, I can't.

5 Q Thank you. I think I earlier asked you if you
6 knew how the proceeds of the sale of the Twin Falls
7 station was going to be used and I think you answered
8 you didn't know. Is that correct?

9 A That's correct.

10 Q But is it possible that those proceeds might
11 be used for a purpose related to the two of you, that is
12 you and your spouse?

13 A I'm not going to speculate. I don't have any
14 idea.

15 Q But to the best of your knowledge, is there
16 any prohibition on your joining in the use of the
17 proceeds of that sale?

18 A What do you mean?

19 Q Do you know, to the best of your knowledge, is
20 there any restriction that would prevent, for example,
21 the monies acquired being used to build a home that you
22 lived in?

23 MR. MONAHAN: Aren't we speculating here, Your
24 Honor? I'll object to that. I mean he's asked several
25 questions about that.